



Draft National Electricity Amendment (Managing ISP project uncertainty through targeted ex post reviews) Rule 2024

The Australian Energy Market Commission makes the following Rule under the National Electricity Law to the extent applied by:

- (a) the *National Electricity (South Australia) Act 1996* of South Australia;
- (b) the *Electricity (National Scheme) Act 1997* of the Australian Capital Territory;
- (c) the *Electricity - National Scheme (Queensland) Act 1997* of Queensland;
- (d) the *National Electricity (New South Wales) Act 1997* of New South Wales;
- (e) the *Electricity - National Scheme (Tasmania) Act 1999* of Tasmania;
- (f) the *National Electricity (Victoria) Act 2005* of Victoria;
- (g) the *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015* of the Northern Territory; and
- (h) the *Australian Energy Market Act 2004* of the Commonwealth.

Anna Collyer
Chairperson
Australian Energy Market Commission

Draft National Electricity Amendment (Managing ISP project uncertainty through targeted ex post reviews) Rule 2024

1 Title of Rule

This Rule is the *Draft National Electricity Amendment (Managing ISP project uncertainty through targeted ex post reviews) Rule 2024*.

2 Commencement

Schedule 1 of this Rule commences operation on [1 August 2025].

Schedule 2 of this Rule commences operation on [1 August 2025].

Schedule 3 of this Rule commences operation on [1 August 2024].

3 Amendment to the National Electricity Rules

The National Electricity Rules are amended as set out in Schedule 1.

4 Amendment to the National Electricity Rules

The National Electricity Rules are amended as set out in Schedule 2.

5 Savings and Transitional Amendment to the National Electricity Rules

The National Electricity Rules are amended as set out in Schedule 3.

Schedule 1 Amendment to the National Electricity Rules

(Clause 3)

[1] Rule 6A.5A Capital expenditure incentive mechanisms

Omit rule 6A.5A(b)(2) and substitute:

- (2) the manner in which it proposes to make determinations under clause S6A.2.2A(a) if the *overspending requirement* or the *ISP overspending requirement* is satisfied;

[2] Clause S6A.2.2A Reduction for inefficient past capital expenditure

Omit clause S6A.2.2A(a1) and substitute:

- (a1) For the purposes of this clause S6A.2.2A:

ISP project review period means the *regulatory years*, of one or more *regulatory control periods*, in which capital expenditure was incurred in relation to a reviewable ISP project.

reviewable ISP project means:

- (1) unless paragraph (2) applies, an *actionable ISP project* that has been commissioned and *energised* within a review period; or
- (2) if an *actionable ISP project* has been staged, each stage of that project which has been commissioned and *energised* within a review period.

review period means:

- (1) the immediately previous *regulatory control period* (excluding the last two *regulatory years* of that *regulatory control period*); and
- (2) the last two *regulatory years* of the *regulatory control period* preceding the immediately previous *regulatory control period*.

[3] Clause S6A.2.2A Reduction for inefficient past capital expenditure

In clause S6A.2.2A(b)(2), omit "or".

[4] Clause S6A.2.2A Reduction for inefficient past capital expenditure

In clause S6A.2.2A(b)(3), omit "." and substitute "; or".

[5] Clause S6A.2.2A Reduction for inefficient past capital expenditure

After clause S6A.2.2A(b)(3) insert:

- (4) the requirement set out in paragraph (c1) (the *ISP overspending requirement*).

[6] Clause S6A.2.2A Reduction for inefficient past capital expenditure

After clause S6A.2.2A(b), insert the following subheading:

Definitions of overspending, ISP overspending and capitalisation requirements

[7] Clause S6A.2.2A Reduction for inefficient past capital expenditure

In clause S6A.2.2A(c), after "sum of all capital expenditure", insert "that is not related to reviewable ISP projects".

[8] Clause S6A.2.2A Reduction for inefficient past capital expenditure

After clause S6A.2.2A(c), insert:

- (c1) The *ISP overspending requirement* is satisfied where the sum of all capital expenditure relating to a reviewable ISP project, incurred during the ISP project review period, exceeds the sum of:
 - (1) the forecast capital expenditure accepted or substituted by the *AER* for that reviewable ISP project as adjusted in accordance with clauses 6A.7.1(f) and 6A.8.2(h); and
 - (2) any capital expenditure for that reviewable ISP project, that is recovered by way of such part of an *approved pass through amount*, or of a *network support pass through amount*, as is permitted to be passed through to *Transmission Network Users* during the ISP project review period less any capital expenditure that is included in a *negative pass through amount*, or in a *network support pass through amount*, that is required to be passed through to *Transmission Network Users* during the ISP project review period.

[9] Clause S6A.2.2A Reduction for inefficient past capital expenditure

After clause S6A.2.2A(d), insert:

Note

This paragraph also applies to capital expenditure relating to reviewable ISP projects.

[10] Clause S6A.2.2A Reduction for inefficient past capital expenditure

After clause S6A.2.2A(e), insert the following subheading:

Determinations if overspending requirements or ISP overspending requirements are satisfied

[11] Clause S6A.2.2A Reduction for inefficient past capital expenditure

Omit clause S6A.2.2A(f) and substitute:

(f) Where the *overspending requirement* is satisfied pursuant to paragraph (c), or the *ISP overspending requirement* is satisfied pursuant to paragraph (c1), and subject to paragraphs (g) and (h), the *AER* may determine that the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6A.2.1(f) should be reduced by such amount as the *AER* is satisfied corresponds to:

- (1) in respect of the *overspending requirement* - capital expenditure that is not related to reviewable ISP projects, incurred during the review period; or
- (2) in respect of the *ISP overspending requirement* - capital expenditure relating to a reviewable ISP project, incurred during the ISP project review period,

that does not reasonably reflect the capital expenditure criteria.

[12] Clause S6A.2.2A Reduction for inefficient past capital expenditure

Omit clause S6A.2.2A(g)(1), and substitute:

- (1) in respect of the *overspending requirement* - must not be greater than the amount calculated in accordance with paragraph (c);

[13] Clause S6A.2.2A Reduction for inefficient past capital expenditure

After clause S6A.2.2A(g)(1), insert:

- (1a) in respect of the *ISP overspending requirement* - must not be greater than the amount calculated in accordance with paragraph (c1);

[14] Clause S6A.2.2A Reduction for inefficient past capital expenditure

After clause S6A.2.2A(h), insert the following subheading:

Determinations if margin requirement or capitalisation requirement are satisfied

[15] Clause S6A.2.2A Reduction for inefficient past capital expenditure

After clause S6A.2.2A(k), insert the following subheading:

AER may request information and conduct analysis

Schedule 2 Amendment to the National Electricity Rules

(Clause 4)

[1] Chapter 10 New definition

Insert the following definition in alphabetical order:

ISP overspending requirement

The requirement set out in clause S6A.2.2A(c1).

Schedule 3 Savings and Transitional Amendment to the National Electricity Rules

(Clause 5)

[1] New rule 11.XXX Rules consequential on the making of the National Electricity Amendment (Managing ISP project uncertainty through targeted ex post reviews) Rule 2024

In Chapter 11, after rule 11.XXX, insert:

11.XXX Rules consequential on the making of the National Electricity Amendment (Managing ISP project uncertainty through targeted ex post reviews) Rule 2024

11.XXX.1 Definitions

(a) In this rule 11.XXX:

Amending Rule means the *National Electricity Amendment (Managing ISP project uncertainty through targeted ex post reviews) Rule 2024*.

11.XXX.2 Capital Expenditure Incentive Guidelines

- (a) By no later than 1 August 2025, the *AER* must update and publish the *Capital Expenditure Incentive Guidelines* to take into account the *Amending Rule*, and in doing so, must comply with the *standard rules consultation procedures*.
- (b) If, prior to 1 August 2024, and for the purposes of updating the *Capital Expenditure Incentive Guidelines* in anticipation of the *Amending Rule* commencing, the *AER* undertook a consultation or step equivalent to those required under the *standard rules consultation procedures*, then the *AER* is taken to have satisfied the relevant consultation or step required under the *standard rules consultation procedures*.